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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,921	09/24/2001	Didier Raoult		3015

7590

09/11/2003

Oliff & Berridge
PO Box 19928
Alexandria, VA 22320

EXAMINER

BASKAR, PADMAVATHI

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 09/11/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/936,921	Applicant(s) RAOULT ET AL.	
	Examiner Padmavathi v Baskar	Art Unit 1645	

-- Th MAILING DATE of this communication appears on th cov r sh et with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: _____ |

RESTRICTION

1. Applicant's amendment filed on 9/20/01 has been entered. Claims 3-16 and 18-24 have been amended. New claims 25-28 have been entered, Claims 1-28 are pending in the application.

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-5, 10, 11, 16-17 and 25 –26 drawn to *Tropheryma whippelii* bacterium, antigens of said bacterium, a method of diagnosis associated with infections caused by *Tropheryma whippelii* using antigen and a kit comprising said bacterium or antigen.

Group II, claims 18-22 and 24 drawn to fragment of rpoB gene of bacterium, oligonucleotide probes and primers.

Group III, claims 6-9, 16-17 and 26 drawn to an antibody and a kit comprising antibody

Group IV, claim 12 drawn to a method for diagnosis associated with infections caused by *Tropheryma whippelii* using antibody

Group V claim 13 drawn to a method for the in vitro serological diagnosis of whipple's disease comprising the step of detecting immunological reaction between antibody and antigen.

Group VI claims 14-15 drawn to a method for the in vitro serological diagnosis of whipple's disease comprising the step of detecting immunological reaction between human immunoglobulin that recognizes bacterium.

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Group VII claims 23 and 27-28 drawn to a method for determining the presence or absence *Tropheryma whippelii* using a fragment of SEQ.ID.NO: 3 as a probe or at least 12 consecutive nucleotide units included in the sequence of SEQ.ID.NO: 3 as a probe

3. The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Group I is directed to bacterium, antigens and a method of use. The special technical feature is the polypeptide, which is made up of amino acids. Groups II-III are drawn to products that share no common structure, no common function or no common property with amino acids of invention I because these products are drawn to nucleic acids and antibodies, which do not require each other for their practice and do not share the same or a corresponding special technical feature so as to form a single general inventive concept under Rule 13.1. Group I claims are drawn to bacterium, protein, and a kit which is the product and first method of using that product. The Groups IV-VII inventions are drawn to methods that use the products, which share no common structure, no common function or no common property and do not share the same, or a corresponding special technical feature. Note that PCT Rule 13.2 does not provide for multiple products or methods within a single application. Since the special technical feature of the Group I invention is not present in the Group II-III, unity of invention is lacking among groups.

4. Applicant is required, in reply to this action, to elect a group to which the claims shall be restricted. The reply must also identify the claims readable on the elected invention, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padmavathi v Baskar whose telephone number is (703) 308-8886. The examiner can normally be reached on M-F (6:30A.M-4: 00 P.M.) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

P. Baskar Ph.D.

9/9/03


LYNETTE F. SMITH
SUPERVISOR EXAMINER
TECHNOLOGY CENTER 1600